Munuswamy Sundar Raj v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–279–10 OF 2011
APANDI ALI, LINTON ALBERT AND HAMID SULTAN JJCA
13 MAY 2013

Criminal Law — Dangerous Drugs Act 1952 — Innocent carrier — Whether Dangerous Drugs Act 1952 ('DDA') cater for defence of 'innocent carrier' — Whether 'defence of innocent carrier' a defence known to law — Whether mere conduct of wilful blindness or assertion of being innocent carrier sufficient to rebut presumption of trafficking or presumption of 'culpable mental state' of accused under DDA

The appellant's sole ground in his instant appeal against conviction and sentence of death by the High Court for trafficking in 20,077.1g ketamine — an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 — was that he was an innocent carrier of the drugs and, consequently, should have been acquitted. The appellant ('accused') was caught carrying a bag containing the drugs by customs officers shortly after he arrived at the Kuala Lumpur International Airport from Singapore. In his defence the accused said a man named Faruk handed the bag to him while he was waiting at Delhi International Airport to board a flight to Malaysia via Singapore. The accused said Faruk claimed he was promoting a certain foodstuff and showed him several sealed boxes in the bag which had price tags and the brand 'Rahman Food Energy Flour' on them and he requested the accused to convey the bag to his contacts in Malaysia in return for a fee of RM2,000. The accused told the trial court that he did not know what the boxes actually contained and that his only interest was in being paid the agreed fee for his 'services'. The trial court rejected the accused's defence of being an 'innocent carrier' holding, inter alia, that his contention that he would be paid RM2,000 for 'carrying out such a simple task' was incapable of belief and, in itself, aroused suspicion. The court also rejected the accused's claim that he came to Malaysia to buy an assortment of electrical goods as he had insufficient funds on him when he was arrested. The trial court held that the defence's narrative failed to raise a reasonable doubt over the prosecution's case. In advancing his defence of being an innocent carrier, the accused urged the appeal court to consider the fact that he did not attempt to escape when he was being apprehended and that given the fact the boxes were sealed and contained the brand of a foodstuff there was no cause for him to suspect that they contained drugs.

Held, dismissing the appeal and affirming the conviction and sentence:

(1) The Dangerous Drugs Act 1952 ('DDA') did not cater for the defence of

'innocent carrier' per se. There was no defence known to law as 'defence of innocent carrier' (see paras 3 &16).

(2) The DDA placed the presumption of culpable mental state on the accused once defence was called for trafficking or, for that matter, possession. When faced with such a presumption mere conduct of wilful blindness or assertion of innocent carrier was insufficient to rebut trafficking (see para 3(d)).

(3) There was no merit in the submission that the accused did not attempt to flee as the factual matrix of the case showed that there was no opportunity for him to flee (see para 16).

(4) There was sufficient material to support the charge and the view taken by the trial court on the relevant issues was a reasonable view of the evidence on record. The trial court had followed the direction in the case of *Mohd Radhi Yaakob v Public Prosecutor* [1991] 3 MLJ 169 and rightly applied the maximum evaluation and beyond reasonable doubt tests. The decision was safe and appellate intervention was not necessary (see paras 18–19).

[Bahasa Malaysia summary

Alasan utama perayu dalam rayuan terhadap sabitan dan hukuman mati oleh Mahkamah Tinggi bagi pengedaran 20,077.1g ketamin — satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 — adalah bahawa dia merupakan pembawa tidak salah dadah tersebut dan justeru, harus dibebaskan. Perayu ('tertuduh') telah ditangkap membawa sebuah beg berisi dadah oleh pegawai kastam sejurus selepas ketibaannya di Lapangan Terbang Kuala Lumpur dari Singapura. Dalam pembelaannya, tertuduh mendakwa bahawa seorang lelaki bernama Faruk telah memberikan beg tersebut kepadanya semasa dia sedang menunggu di Lapangan Terbang Delhi untuk menaiki kapal terbang ke Malaysia melalui Singapura. Tertuduh menyatakan bahawa Faruk mendakwa bahawa dia mempromosikan bahan makanan dan menunjukkan beberapa buah kotak yang telah dikedap dalam beg tersebut yang mempunyai tanda harga dan jenama 'Rahman Food Energy Flour' di atasnya dan meminta tertuduh memberikan beg tersebut kepada kenalannya di Malaysia dengan balasan bayaran sebanyak RM2,000. Tertuduh memberitahu mahkamah bicara bahawa dia tidak mengetahui kandungan sebenar kotak-kotak tersebut dan kepentingannya hanyalah dibayar bayaran yang dipersetujui bagi 'khidmatnya'. Hakim perbicaraan menolak pembelaan tertuduh sebagai 'pembawa tidak salah' dengan memutuskan, antara lain, bahawa dakwaan dia akan dibayar RM2,000 bagi 'menjalankan satu tugasan yang mudah' sukar dipercayai dan dengan sendirinya, membangkitkan syak wasangka. Mahkamah juga menolak dakwaan tertuduh bahawa dia datang ke Malaysia untuk membeli pelbagai barangan elektrik kerana dia tidak mempunyai wang yang cukup semasa ditangkap. Hakim perbicaraan

memutuskan bahawa naratif pembelaan gagal membangkitkan keraguan munasabah ke atas kes pendakwaan. Dalam mengemukakan pembelaannya sebagai pembawa tidak salah, tertuduh menggesa mahkamah rayuan untuk mempertimbangkan fakta bahawa dia tidak cuba untuk melarikan diri ketika ditahan dan memandangkan bahawa kotak-kotak tersebut dikedap dan mempunyai jenama bahan makanan, tiada sebab untuknya mengesyaki bahawa kesemuanya mengandungi dadah.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Akta Dadah Berbahaya 1952 tidak memperuntukkan pembelaan 'pembawa tidak salah' semata-mata. Tiada pembelaan yang diiktiraf oleh undang-undang sebagai 'pembelaan pembawa tidak salah' (lihat perenggan 3 & 16).

(2) Akta Dadah Berbahaya 1952 tidak meletakkan anggapan kebersalahan minda ke atas tertuduh apabila pembelaan dipanggil bagi pengedaran atau, untuk perkara tersebut, milikan. Apabila berdepan dengan keadaan sedemikian, tanggapan perbuataan kebutaan sengaja atau dakwaan pembawa tidak salah semata-mata adalah tidak mencukupi untuk mematahkan pengedaran (lihat perenggan 3(iv)).

(3) Tiada merit dalam hujahan bahawa tertuduh tidak cuba untuk melarikan diri kerana fakta menunjukkan bahawa tiada peluang untuknya melarikan diri (lihat perenggan 16).

(4) Terdapat material yang cukup untuk menyokong pertuduhan dan pandangan yang diambil oleh mahkamah bicara mengenai isu-isu relevan adalah pandangan-pandangan yang munasabah mengenai keterangan dalam rekod. Mahkamah bicara telah mengikut kes *Mohd Radhi Yaakob v Public Prosecutor* [1991] 3 MLJ 169 dan dengan betul mengguna pakai penilaian maksimum dan ujian keraguan munasabah. Keputusan adalah selamat dan campur tangan mahkamah rayuan adalah tidak perlu (lihat perenggan 18–19).]

Cases referred to

Ahmad bin Ibrahim v PP [2012] 6 MLJ 305; [2012] 7 CLJ 4, CA (folld)
Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209; [1996] 1 CLJ 705, FC (refd)
Bhagwan Swarup v State of Maharashtra AIR 1965 SC 682 (refd)
Chin Kek Shen v PP Criminal Appeal No B-05–83/03 of 2012 (5 April 2013), CA (refd)
Marlan Marpaung v PP [2013] 1 MLJ 108; [2012] 8 CLJ 41, CA (distd)
Mohd Radhi bin Yaakob v PP [1991] 3 MLJ 169; [1991] 1 CLJ (Rep) 311, SC (folld)
PP v Aszzid Abdullah [2008] 1 MLJ 281, HC (refd)
Sochima Okoye v PP [1995] 1 MLJ 538, CA (refd)

A *Syed Ismail v PP* [1967] 2 MLJ 123 (refd)
Tong Kam Yew & Wang Wee Cheng v PP Criminal Appeal No B-05–63 of 2011 (20 March 2013), CA (refd)

Legislation referred to

B Evidence Act 1950 s 53

Appeal from: Criminal Trial No 45–189 of 2008 (High Court, Shah Alam)

Baljit Singh Sidhu (Shukor Baljit & Partners) for the appellant.
Nadia Hanim (Deputy Public Prosecutor, Attorney General's Chambers) for the
C *respondent.*

Hamid Sultan JCA (delivering judgment of the court):

D **[1]** The appellant's/accused appeal came up for hearing on 26 March 2013 and upon hearing we dismissed the appeal on the same day. My learned brothers Mohamed Apandi bin Hj Ali JCA and Linton Albert JCA have read the judgment. This is our judgment.

E **[2]** The appellant was sentenced to death for trafficking by the High Court. The petition of appeal has raised a number of grounds. Learned counsel for the appellant upon the commencement of the hearing informed the court that he will rely on only one ground ie relating to the defence of innocent carrier.

F **[3]** We must at the outset say the Dangerous Drugs Act 1952 does not cater for defence of 'innocent carrier', per se ie innocent carrier is not a defence known to law. From decided cases it is well settled that once the accused is called to enter his defence for trafficking then:

G (a) he must lead evidence to rebut the statutory presumption of trafficking on the balance of probabilities (see *Mohd Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169; [1991] 1 CLJ (Rep) 311;

(b) the threshold requirement to achieve this standard is not high. As long as the accused story is not inherently incredible and when tested with
H prosecution story applying the maximum evaluation and beyond reasonable doubt test creates a reasonable doubt in the prosecution case is sufficient to rebut trafficking, (see *Sochima Okoye v Public Prosecutor* [1995] 1 MLJ 538);

I (c) accepting or rejecting the story is based on finding of fact and the appellate court has no jurisdiction to intervene in the finding of facts if the trial judge has correctly applied *Radhi*'s direction as well as the maximum evaluation and beyond reasonable doubt test in the right perspective;

(d) just asserting that he is an innocent carrier in evidence will not satisfy the requirement of law. DDA 1952 places the *presumption of culpable mental state* on the accused once defence is called for trafficking or for that matter possession. (Emphasis added.) When faced with a presumption of culpable mental state mere conduct of willful blindness or assertion of innocent carrier is not sufficient to rebut trafficking; and

(e) there are many ways to convince the court that the story of accused is not inherently incredible. One may be by adducing good character of the accused and also by giving proper notice to the prosecution at the earliest opportunity preferably at the time of arrest or even before being charged of the relevant evidence which would support the defence story. It is well settled that once the accused has given his version after the arrest, there is a duty and onus for the prosecution to check the accused version (see *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209; [1996] 1 CLJ 705).

[4] Section 53 of the Evidence Act 1950 appears to have been forgotten by practitioners. Section 53 paves way for a formidable defence to be anchored on behalf of the accused. The said section states:

> In criminal proceedings the fact that the person accused is of a good character is relevant.

[5] It will be useful to produce one or two paragraphs from *Janab's Key to Criminal Procedure and Evidence* (2nd Ed), at pp 854–855 where the learned author Hamid Sultan bin Abu Backer had this to say:

> This section only applies to criminal cases and makes the character of the accused relevant. A person is innocent until proven guilty. In support of this presumption evidence of good character of the accused is made relevant. It has been said in some cases that the innocence or criminality of an accused can easily be judged by looking at his character and the accused must be allowed to prove his innocence with the help of his good character. In *Habeeb Mohammed v State of Hyderabad* AIR 1954 SC 51 the Indian Supreme Court observed:
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> In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. May acts of an accused person which appear to be suspicious become free from the suspicion, when we come to know the character of the person by whom they are done. Even on the question of punishment an accused is allowed to prove general good character. When the allegation against the appellant was that he was acting in pursuance of the policy of Ittehadul-Muslameen, that his state of mind was to exterminate the Hindus, he was entitled to lead evidence to show that he did not possess that state of mind, but on the other hand, his behavior towards the Hindus throughout his official career had been very good, and he could not possibly think of exterminating them.

[6] It must be noted that evidence can be given both on general character and general disposition. However, it cannot outweigh positive evidence in regard to the guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused, (see *Bhagwan Swarup v State of Maharashtra* AIR 1965 SC 682).

[7] In *Syed Ismail v Public Prosecutor* [1967] 2 MLJ 123 HRH Raja Azlan Shah J (as HRH then was) was of the view that the accused must lead positive proof as to the excellence of his character and that for an accused to say no complaint have been lodged against him is at best a negative averment.

[8] In essence s 53 of the Evidence Act 1950 stands as a statutory defence to an innocent accused and if the defence is properly nurtured to establish a story which is not inherently incredible and if that story tested with the evidence of the prosecution upon the application of the *Radhi's* direction, as well as maximum evaluation and beyond reasonable doubt test creates a reasonable doubt it will be sufficient to rebut trafficking.

THE BRIEF FACTS

[9] The charge against the appellant reads as follows:

> Bahawa kamu pada 18 Oktober 2008, lebih kurang jam 5.15 petang di alamat Balai Ketibaan Antarabangsa, Unit Khas Pemeriksaan Penumpang (UKPP), Lapangan Terbang Antarabangsa Kuala Lumpur, di dalam daerah Sepang dalam negeri Selangor Darul Ehsan, telah mengedar dadah berbahaya iaitu Ketamine seberat 20,077.1 gram, dan dengan itu kamu telah melakukan kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[10] At the end of the prosecution case the High Court had reduced the charge to possession. The appellant pleaded guilty and was sentenced to five years imprisonment and fine. The prosecution being dissatisfied appealed to the Court of Appeal. The Court of Appeal allowed the appeal and ordered the defence to be called on the original charge of trafficking. That part of the judgment of the Court of Appeal reads as follows:

> Unanimous decision, we allow the appeal by the prosecution in Criminal Appeal No B-05–73 of 2010. And also order that the respondent be called for his defence, before the same High Court judge (YA Datuk Wira Mohtarudin bin Baki), for an offece of trafficking in dangerous drugs, to wit, ketamine weighing 20,077.1g under s 39B(1)(a) of the same Act and punishable under s 39B(2) of the same Act. We are of the view that there is mens rea possession and there is actual trafficking committed by the respondent. A prima facie case against the respondent for an offence of trafficking as per the charge is made out successfully by the prosecution. While awaiting trial, the respondent is to be remanded in prison.

The hearing before the same High Court judge is to be expedited and the respondent to be produced before the High Court Shah Alam on 25 July 2011 (Monday) in order to fix thedate of Continued Hearing.

[11] The High Court called for the defence and at the end of the defence case convicted and sentenced the appellant to death for trafficking. The learned trial judge had adumbrated the facts and justification for conviction and sentence in his 13 page judgment. We do not wish to repeat the same save to summarise as follows:

(a) the appellant was caught red handed carrying a bag containing drugs while arriving at the KLIA International Airport;

(b) his defence was that the bag which contained the drug was given by one named Faruk in Delhi. The learned judge has captured the evidence as follows:

> Semasa berbaris untuk mendaftar masuk penerbangan di Delhi International Airport, OKT telah didatangi oleh seorang lelaki yang bertanyakan samada OKT akan ke Malaysia. Lelaki tersebut yang kemudiannya dikenali sebagai 'Faruk' telah secara terdesak menyatakan bahawa beliau perlu menghantar makanan yang hendak dipromosikan di Malaysia dan selanjutnya menjanjikan wang RM2,000.00 untukpenghantaran barangan tersebut.
>
> 'Faruk' ini juga telah membuka satu bagasi berwarna maroon (sila lihat Eksibit P8(35) dan (36) dan di dalamnya menurut OKT terdapat 'Rahman Food Energy Flour' dalam kotak-kotak yang bermeteri dan mempunyai tag harga, seperti yang terdapat di pasaran.
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> Setelah bersetuju membantu lelaki itu, 'Faruk' telah mengunci bagasi berkenaan dan memberi anak kunci kepada OKT and OKT telah meneruskan perjalannnya ke Malaysia. Selain itu OKT menyatakan bahawa Faruk telah memberinya 'simcard' untuk urusan OKT dihubungi rakan Faruk di KLIA.
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> Setelah transit sebentar di Singapura, OKT telah menaiki penerbangan Singapore Airline ke KLIA dan apabila tiba di KLIA OKT telah menukar 'simcard' telefon bimbitnya kepada 'simcard' yang diberi oleh Faruk. Kemudian OKT telah menerima beberapa panggilan dari orang yang tidak dikenalinya termasuk 'private number' tetapi hanya kedengaran bunyi 'hello' sahaja. Dalam perjalanan mengambil bagasi OKT telah menerima satu 'SMS' yang berbunyi 'apa warna pakaian'.
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> OKT seterusnya menyatakan bahawa beliau telah mengambil bagasinya di Pejabat Singapore airline setelah ditunjukkan oleh salah seorang pekerja di Singapore Airline bahawa bagasi tersebut berada di luarpejabat berkenaan.
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> Semasa menolak troli bersama bagasi maroon tersebut OKT telah ditahan oleh pihak Kastam atas dakwaan beliau membawa dadah.
>
> OKT telah menyatakan bahawa beliau tiada pengetahuan langsung mengenai isi kandungan kotak-kotak 'Rahman Energy Food Flour' berkenaan dan pada mulanya apabila ditunjukkan oleh pegawai kastam beliau berfikiran ianya

'Ajinomoto'. Tambahan pula keterangan OKT menunjukkan bahawa beliau tiada pengetahuan mengenai isi kotak-kotak tersebut yang mana ianya bermeteri serta beliau hanya mengharapkan upah RM2,000.00 yang lumayan.

(c) the learned trial judge had rejected the appellant's evidence and stated it is not reasonable to have been paid RM2,000 and that the appellant was not having sufficient money to support his story that his purpose of visit to Malaysia was to buy electrical goods. That part of the judgment reads as follows:

> Saya juga bersetuju dengan hujah timbalan pendakwa raya bahawa untuk kerja yang mudah OKT dibayar dengan upah yang lumayah RM2,000. Fakta ini dengan sendirnya bagi seseorang yang munasabah akan menimbulkan (*arouse*) *suspicion*.
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> Rujuk kes *Public Prosecutor v Amil bin Akmad* [2007] 5 MLJ 561 (CA).
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> Tujukan OKT ke Malaysia untuk membeli barang-barang elektrik seperti TV, DVD player, jam dan *tape recorder* (rujuk cross-examination OKT) tetapi semasa ditahan OKT hanya mempunyai Rupee 25,000–27,000. Ini tidak memadai untuk membeli barang-barang elektrik yang agak mahal.
>
> 'Actual Trafficking'
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> Tiada keterangan baru untuk menimbulkan keraguan yang munasabah. Saya mendapati keputusan Mahkamah Rayuan adalah mengikut dan 'actual trafficking' dibuktikan melampaui tahap keraguan yang munasabah di mana di dalam keterangan OKT, beliau membawa dadah-dadah tersebut daripaa India transit di Singapure dan ke Malaysia untuk diserahkan daripada 'Faruk' kepada seseorang yang akan mengambilnya di Malaysia.
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> Hujah peguam mengenai 'innocent carrier' tidak dapat diterima atas alasan yang sama iaitu upah yang diterima agak lumayan dengan tugas yang ringan dan mudah, sudah pasti akan menimbulkan keraguan. Konsept 'wilful blindness' terpakai (*Hoh Bon Tong v Public Prosecutor* [2010] 5 CLJ 240 (CA) dan *Public Prosecutor v Amil bin Akmad* [2007] 5 MLJ 561 (CA)).
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> Dengan itu, atas *maximum evaluation* dan menguji kes pembelaan dengan kes pendakwaan saya dapati bahawa pembelaan gagal menimbulkan sebarang keraguan yang munasabah. Dengan itu OKT didapati 'guilty and convicted' *as per charge*.

[12] It was the appellant's case that he came to Malaysia from Chennai to purchase goods. He stated that he started his journey from Chennai to Bombay and then to New Delhi and thereafter to Singapore and finally arrived in Kuala Lumpur. It is our observation that Chennai to Kuala Lumpur is only less than four hours travel by flight and one need not travel to all the above destinations to reach Kuala Lumpur.

[13] Learned counsel for the appellant pleads that the appellant is an innocent carrier and in consequence he must be acquitted. The relevant part of the submission reads as follows:

> The Appellant submits that the Appellant's act of not fleeing or trying to run away from the scene and to follow all the instructions given to him by the officers clearly indicate that the Appellant did not know the content of the boxes he was carrying inside the maroon bag, hence support the fact that the Appellant was an innocent carrier.
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> Another important factor that was not taken into consideration by the Learned Judge from High Court was the way the drugs were packed and brought to Malaysia.
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> The Appellant humbly submits that any reasonable man would not have suspected that the 'Rahman Energy Flour' boxes would contain drugs by looking at the tidiness of the packaging. The drugs were found in a transparent plastic packed in a sealed aluminium foil and boxed in a famous branding box, which resembles as if it was newly bought or newly packed. This statement was agreed and admitted to by two of the Prosecution's witnesses as below:
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> Evidence by SP6: Maimunah binti Sulaiman.
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> Tanpa buka kotak saya tak akan tahu apa isi kandungannya. Begitu juga aluminium foil, tanpa dibuka seseorangitu tak akan tahu apa isi kandungannya.
>
> Evidence by SP7: Roslan bin Mohammad Noor.
>
> 25 kotak dalam keadaan belum dibuka. Seolah-olah baru beli di kedai atau kilang. Saya ada beritahu Pegawai Penyiasat, saya buka satu kotak sahaja.
>
> Dalam kota yang dibuka terdapat satu peket aluminium - bermetri seperti baru dibeli. Dari alouminium foil - satu peket plastic lutsinar berisi ketulan kecil seperti gula. Saya buka peket plastic itu untuk rasa dengan jari.

[14] And relies on the case of *Ahmad bin Ibrahim v Public Prosecutor* [2012] 6 MLJ 305; [2012] 7 CLJ 4 where the Court of Appeal stated:

> Turning now to the third ground, it was argued by learned counsel that the learned High Court judge had failed to appreciate the evidence given by the appellant that he was an innocent carrier of the bag containing the cannabis for Iskandar and that the appellant had only momentary custody and control of the bag without knowledge that the bag contained cannabis. According to the appellant, there was lack of judicial appreciation of the defence of the appellant. A defence of innocent carrier refers to a state of affairs where an accused person acknowledges carrying, for example a bag, as in the case before us, containing the dangerous drugs but disputes having knowledge of the drugs.

[15] And complains that the learned trial judge fell into error in denying the defence of an innocent carrier. And that part of the submission reads as follows:

A The learned High Court Judge also fell into error in denying the Appellant defence of an innocent carrier by referring to the case of *Hong Bon Tong v PP* [2010] 5 CLJ 240 & *PP v Amil bin Akmad* [2007] 5 MLJ 561, as the facts of the case are readily distinguishable from the present facts.

B

[16] As we have stated earlier there is no defence known to law as asserted by learned counsel for the appellant ie the 'defence of innocent carrier'. In addition there is no merit in the submission that the appellant did not attempt to flee, as the factual matrix of the case will show there could not have been any C opportunity to flee that too at the Airport. The reliance of the case of *Marlan Marpaung v Public Prosecutor* [2013] 1 MLJ 108; [2012] 8 CLJ 41 is not of any help to the appellant. In fact, in *Marlan*'s case the Court of Appeal made it clear the totality of the evidence must be looked into in any decision making process. Abdul Malik Ishak JCA had this to say:

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> The defence of the appellant cannot stand in isolation. It must be determined by reference to the facts and circumstances prevailing in each particular case (*Ridwan v Public Prosecutor* [2010] 4 CLJ 570; *Hoh Bon Tong v Public Prosecutor* [2010] 5 CLJ 240; and *Wong Vui Chin v Public Prosecutor* [2009] MLJU 1703; [2011] 3 CLJ 383).
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> E In our judgment, the appellant could not avail himself of the defence of innocent carrier because there was ample evidence to show that the appellant had knowledge of the drugs that he was carrying. The contemporaneous conduct of the appellant by fleeing the scene and putting up a struggle with the police party before the discovery of the drugs would have a direct bearing on the facts in issue and would have F certainly damaged or whittled away the presumption of innocence on the part of the appellant. A reasonable tribunal appraised of the facts and after hearing this appeal would have concluded that the appellant was not an innocent carrier and that the appellant knew that he was carrying the drugs in the black plastic bag (exh 'P24') for the purpose of trafficking.

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[17] Notwithstanding the fact that the learned counsel for the appellant had relied on only one ground, we have taken the initiative to go through the petition of appeal, appeal record and grounds of judgment in detail. We take H the view that the appeal has no merits.

[18] It is well settled that it is in the hands of triers of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction as well as sentence. We have perused the evidence in detail and we I are satisfied that there are sufficient material to support the charge and the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt test, (see *Public Prosecutor v Aszzid Abdullah* [2008] 1 MLJ 281; *Tong Kam Yew &*

Wang Wee Cheng v Public Prosecutor Criminal Appeal No B-05–63 of 2011 (20 March 2013); *Chin Kek Shen v Public Prosecutor* Criminal Appeal No B-05–83/03 of 2012 (5 April 2013)).

[19] In consequence it is a safe decision and appellate intervention is not necessary. Appeal is dismissed. The conviction and sentence by the High Court is affirmed.

[20] We hereby order so.

Appeal dismissed and conviction and sentence affirmed.

Reported by Ashok Kumar